

REMARKS

Applicants have amended claims 1 and 2 and claims 9 to 15 have been withdrawn from consideration. No claims have been canceled. Accordingly, upon entry of this Amendment, claims 1 to 8 remain pending in this patent application.

Applicants address each and every point raised in the above-identified Office action as follows:

I. Election of Claims

The subject matter presented in claims 9 to 15 has been identified by the Examiner as allegedly being directed to an invention independent or distinct from the invention as originally claimed. Although Applicants do not agree with the Examiner's contention, Applicants have withdrawn these claims for the purposes of furthering and facilitating the allowance of remaining claims 1 to 8. In view thereof, Applicants respectfully request reconsideration.

II. Claim Rejections Under Section 112

Claims 1 to 8 have been rejected under 35 U.S.C. §112, second paragraph, as allegedly failing to comply with the written description requirement. Applicants submit that the noted language in claim 1 "move the penetrating tip into the second open position to enable the solid materials . . . "is well supported in the specification such than one having ordinary skill in the art reading the description (e.g., paragraphs [0009] last sentence, [0038] second sentence) and referencing the drawings (e.g., looking at FIGS. 4 and 5) would know that the invention indeed posses this noted feature as recited in the claim.

In view thereof, Applicants respectfully request that the rejection of claims 1 to 8 under 35 U.S.C. §112 be reconsidered and withdrawn.

III. Claim Rejections Under Section 103

Claims 1 to 8 have been rejected under 35 U.S.C. §103 as being allegedly unpatentable by JP 63202345 (the '345 patent). Applicants note that independent claim 1 has been amended to clarify that the device is a hand-held device, and includes one or more surface features provided for accommodating hand held operation. Further, independent claim 1 includes the feature that the penetrating tip be configured in a manner that provides an open and closed position.

The '345 patent fails to disclose or remotely suggest a device that is hand held, thus also necessarily fails to disclose a device having one or more features provided to accommodate holding and operating the device, e.g., moving the piston within the sleeve, by hand.

Further, contrary to the Examiner's assertion, the '345 patent fails to disclose or remotely suggest a penetrating tip, e.g., a segmented tip, that is configured to provide an open and closed position. Rather, the '345 patent discloses a tip that is only in an open position. It appears that the '345 patent is primarily intended for use with injecting a soft food object, such as a bun made from bread. In contrast, a feature of Applicants' invention comprising the penetrating tip is that when in the closed position it functions to facilitate injecting a hard food article, such as meat articles.

In view thereof, Applicants submit that one having ordinary skill in the art aware of the '345 patent would not be motivated to make a hand-held injection device including the many features of Applicants' invention as recited in amended independent claim 1. Applicants, therefore, respectfully request that the rejection of this claim, and claims 2 to 8 depending therefrom, under 35 U.S.C. §103 be reconsidered and withdrawn.

IV. Conclusion

For the reasons presented above, Applicants respectfully request that the amendment to claims be entered, that the claim rejections under 35 U.S.C. §112, and under 35 U.S.C. §103 be reconsidered and withdrawn, and that claims 1 to 8 be passed to allowance.

The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply. The Commissioner is authorized to charge any underpayment, and to credit any overpayment of fees due, including extension of time fees, to Deposit Account No. 50-3683.

Respectfully submitted,

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